



KOOTENAI TRIBE OF IDAHO

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cc: Scott Suffrage

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Dear Members of the Federal Caucus:

The Kootenai Tribe of Idaho (KTOI or Tribe) thanks the Federal Caucus for the Opportunity to meet on a government – to – government basis and comment on the *Conservation of Columbia Basin Fish – Building a Conceptual Recovery Plan* (the Paper) and the *Army Corps of Engineers Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement* (DEIS). The Tribe thanks the Caucus in advance for preparing a revised draft of the All-H Paper in an attempt to address KTOI and other upriver tribal interests. The following general comments are intended to assist the Federal Caucus in their overall approach to the paper. Comments that are more specific are provided in the attachment.

All – H Paper

The All – H Paper in its current version limits the Federal Caucus' trust responsibility to treaty tribes. All of the federal parties have acknowledged, however, that they have a trust responsibility to *all* tribes, irrespective of treaty status. The federal parties must fulfill the trust responsibility by promoting, protecting and enhancing all tribal trust resources and rights. The All – H Paper should reflect these commitments.

An example of the failure to acknowledge the trust responsibility owed to all tribes exists at page 146 of the 4/29/00 version in the definitional section. "Tribal fishing rights" and "Trust obligations/responsibility" are defined in light of the treaties only, and do not acknowledge that treaties do not create the rights and rights are not limited to those described in treaties.

Treaties do not establish tribal rights. Tribes possessed sovereign rights long before contact with non – Indians and agreements with the United States. See, *United States v. Winans*, 198 U.S. 371,381 ("the treaty was not a grant of rights to the Indians, but a grant of rights from them – a reservation of those not granted.") Tribes without treaties still retain reserved rights. See, *United States v. Wheeler*, 435 U.S. 313,323 (1978); *Sac & Fox Tribe v. Licklider*, 576 F. 2d 145 (8th Cir. 1978), cert. denied, 439 U.S. 955.

The Paper fails to adequately address or acknowledge upriver tribes' interests, such as resident fish and wildlife. Instead, the discussion is limited to anadromous, down river issues. A comprehensive approach to recovery of all species in the Basin must be included in order to be effective and consistent with the federal trust responsibility.

The Paper fails to adequately acknowledge the contributions of KTOI and other upriver tribes to fisheries and wildlife enhancement. In particular, the Tribe requests that the flow strategies outlined in the final *Recovery Plan for the Kootenai River Population of the White Sturgeon* (USFWS, 1999) be considered. These strategies are vital to the Tribal interest in the recovery of the Kootenai River White Sturgeon. The Kootenai Tribe of Idaho and other upriver tribes have been, and will continue to be, important contributors to the recovery of the Basin, a fact that should be recognized and included in the Paper.

The Basin plan must demonstrate a better understanding of tribal culture. A greater commitment to protection of cultural resources is needed. Federal parties must understand that the resources of the entire Basin, from fish and wildlife to berries to sacred sites, are important to the life of the tribes. A more detailed discussion of these considerations and their importance must be included.

The Paper needs to clearly acknowledge that it outlines a continuing process. The Paper is not the fulfillment of the trust responsibility. The Paper is just one of the many actions that are taking place and will continue to take place in the Basin. The Federal Caucus should also commit to a responsibility to continue to meet with the tribes on a government – to government basis.

Lower Snake River DEIS

The information describing the Kootenai Tribe of Idaho in Section 4.8 and Appendix Q is incorrect. The DEIS states that the Hell Gate Treaty established the sovereignty of the Kootenai Tribe of Idaho. Treaties do not establish tribal sovereignty. *See, United States v. Winans*, 198 U.S. 371; *United States v. Wheeler*, 435 U.S. 313 (1978). Tribes are “distinct, independent political communities” possessing inherent sovereignty. *See, Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832); *Wheeler*, 435 U.S. at 323-324; *Talton v. Mayes*, 163 U.S. 376 (1896). The group of Kootenai families living near Bonner’s Ferry, Idaho were recognized prior to 1894, and were ordered onto the Flathead Reservation when the Hell Gate Treaty was signed in 1855. The Bonners Ferry Kootenai, however, refused to abandon their aboriginal homeland. In 1894, the U.S. government allotted lands to the Kootenai, thus allowing the families to remain. In 1974, a reservation of approximately 12.5 acres was established. Many of the original allotments continue to remain in tribal ownership.

Thank you for the opportunity to comment. We look forward to the continuing government – to government relationship between the Tribe and the Federal Caucus.



Velma Bahe,
Tribal Chairperson
Kootenai Tribe of Idaho

Kootenai Tribe of Idaho

SPECIFIC COMMENTS RELATED TO THE ALL-H PAPER, 4/29/00 DRAFT

Treaty and Trust Responsibility

Treaties do not establish tribal rights. Tribes possessed sovereign rights long before contact with non-Indians and agreements with the United States. Tribes without treaties still retain reserved rights. This concept needs to be included in the following locations: Introduction on page 4, paragraph 4, last sentence; Institutional and Regulatory Context on page 34; Section 1.5 Tribal Obligations on page 35; and Section 4.3, Current Level of Coordination.

Goals and Objectives

On page 6 of the Paper, the Federal Caucus suggests five or six goals for a regional fish recovery plan. The Kootenai Tribe of Idaho suggests that the goal of the plan should go beyond conservation and include the concept of restoration of the ecosystem. This goal is the underlying assumption behind the objectives of conservation of species, ecosystems, as well as Tribal fishing rights and culture. This goal should be incorporated into the Ecological and Managerial Performance Measures cited on page 70 and the Integrated Alternatives in Section 4.2.

Considerations for Resident Fish

The Paper fails to adequately address or acknowledge upriver tribes' interests, such as resident fish and wildlife. Instead, the discussion is limited to anadromous, down river issues. A comprehensive approach to recovery of *all* species in the Basin must be included in order to be effective and consistent with the federal trust responsibility. Resident fish such as the Burbot and Kokanee as well as others are impacted by ecosystem changes to the river. Resident fish such as Kootenai River White Sturgeon are also of cultural importance to the Kootenai Tribe. Discussions on resident fish should be included in the following locations: Section 1.3, Biological Requirements, page 27; Section 2.1.6, page 39; Section 2.4 Scientific Tools, page 41; Section 3.1.7, page 60; Section 3.1.8, page 66; Table 2, page 70; Section 3.2 Harvest; Section 3.3, Hatcheries; Section 3.4, Harvest; and Section 4.1, Integrated Alternatives.

The habitat options use the assumption that watershed improvement for salmon and steelhead will necessarily benefit other resident fish. This assumption, while it may be true, is unsupported by scientific evidence. When considering each option, ecosystem effects must be considered independently for all species from the top of the watershed down. See Section 3 Range of Options for Each H, page 44, 50, 51, 55, and 66.

Effective Species Conservation

In comments submitted by the Kootenai Tribe of Idaho on March 15, 2000, the Tribe suggested a management review of the existing governmental infrastructure and institutional barriers that stand in the way of effective recovery of the affected species. These barriers include cumbersome procedures for the funding of fish recovery projects and delays in the decision making process. One example where change can be effected is to include Tribes in the coordination of program priorities and funding, as discussed on page 69.

The Tribe also wishes to clarify its previous comment regarding a management review of the fish recovery activities. Such a review should be focused on streamlining the funding and decision making process for fish conservation. This comment was inappropriately addressed and inaccurately represented in the section on "Additional Implementation Issues" on page 68.

Correction

In Section 3.4.8, page 112, the Annual flow management plans are coordinated through the Kootenai Tribe of Idaho, not the Kootenai-Salish Nation.

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